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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/684,006	10/14/2003	Ming-Hsiao Lai	1496-929	3222
7590	02/22/2005		EXAMINER	
John S. Egbert Harrison & Egbert 7th Floor 412 Main Street Houston, TX 77002			NOVOSAD, JENNIFER ELEANORE	
			ART UNIT	PAPER NUMBER
			3634	
DATE MAILED: 02/22/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/684,006	LAI, MING-HSIAO	
Examiner	Art Unit		
Jennifer E. Novosad	3634		

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 14 October 2003.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

4)  Claim(s) 1-4 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5)  Claim(s) \_\_\_\_\_ is/are allowed.  
6)  Claim(s) 1-4 is/are rejected.  
7)  Claim(s) \_\_\_\_\_ is/are objected to.  
8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on 14 October 2003 is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_ .

5)  Notice of Informal Patent Application (PTO-152)

6)  Other: \_\_\_\_ .

## **DETAILED ACTION**

### ***Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the second and the third holders each having their own projections retained in the *same* two retaining slots of the upright support rod, as in the claimed combination of claim 3 (see Section 112, 2<sup>nd</sup> paragraph rejection, advanced below, for explanation), must be shown or the features canceled from the claims. No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Objections***

Claim 4 is objected to because it appears that "power" in line 3 should be changed to --paper--. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 3 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 3 is rendered indefinite since there are only two retaining slots in the rod, it is unclear how the projections of the second holder, as in claim 2, and the projections of the third holder, as in claim 3, are both retained in the same two slots (set forth in claim 2) of the support rod. In view of the drawings, the second and third holders are not shown together, as required in the claimed combination of claim 3, i.e., note that claim 2 depends from claim 1 and claim 3 depends from claim 2 and therefore claim 3 requires both the second and third holders.

*Accordingly*, the structural relationship of the elements is unclear and thus the metes and bounds of the claim cannot be properly ascertained because it is unclear whether claim 3 is intended to be requiring both the second and third holders and attached to the support rod in the way noted above.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No.

5,855,286 (Zaid '286).

Zaid '286 discloses a floor rack comprising a base (34, 36a-c, 40); an upright support rod (12) extending from the base; a first holder (16) fastened with a top end of the rod (12); a second holder (26) fastened with the rod (12) whereby the second holder (26) has a fastening portion (at 70 - see Figure 5) fastened to the rod (12), a holding arm (generally at 76a, b in Figure 5) and a ring (unnumbered); a third holder (18) detachably fastened with the rod; and a fourth holder (20, or 22, etc.) having a locating portion (at 70) and a holding arm.

It is noted that the recitations such as "for holding bathroom sundries", "for holding a paper towel roll ready to serve", "for holding a container", etc. in claims 1-4, are functional recitations and therefore these items are not being positively required by the claim. *Thus*, a reference need not explicitly show use with these particular items but rather a reference need only be *capable of* being used with these items in order to meet the language of the claim. *Accordingly*, although the rack of Zaid '286 does not show explicit use with such items as referenced in the instant claims, Zaid '286 is considered to be *capable of* use with these items, and thus is considered to meet the claimed limitations of the instant claims, as noted above.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

*Insomuch as the claims are best understood (in view of the Section 112, 2<sup>nd</sup> paragraph rejection, advanced above), claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being*

unpatentable over Zaid '286 as applied to claim 1 above, and further in view of U.S. Patent No. 1,188,921 (Finkelstein '921).

Zaid '286 discloses the rack as advanced above.

The claims differ from Zaid '286 in requiring the rod to have two retaining slots and each of the second and third holders to have two retaining projections that are retained in the slots of the rod.

Finkelstein '921 teaches a rack comprising holders (one holder is 17, 18 - as in Figure 7) which have two retaining projections that are retained in two retaining slots (see Figure 7) disposed on an upright support rod (2).

*Accordingly*, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the rack of Zaid '286 with retaining slots in the rod and the ends of the holders with retaining projections to be retained in the slots, as taught by Finkelstein '286, instead of the ends of the holders resting against the side of the rod, as shown by Zaid '286, for increased structural support and stability of the rack once assembled and when items are placed thereon.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zaid '286 in view of Finkelstein '921 as applied to claims 2 and 3 above, and further in view of U.S. Patent No. 3,524,616 (Marschak '616).

The claim differs from the above references in requiring the rod to have an insertion hole in communication with a hollow interior thereof and the fourth holder to be detachable fastened to the rod such that the locating portion is removably located in the hollow interior of the rod via the insertion hole.

Marschak '616 teaches a rod (12) having an insertion hole (40) in communication with a hollow interior (see Figure 2) thereof and the fourth holder (42) to be detachable fastened to the rod such that the locating portion (52) is removably located in the hollow interior of the rod (12) via the insertion hole (40).

Thus, It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the rack of Zaid '286 with an insertion hole and a hollow interior and the forth holder with a locating portion inserted therein, as taught by Marschak '616, instead of the holder resting upon the surface of the rod, for increased structural support and stability of the rack once assembled and items are placed therein.

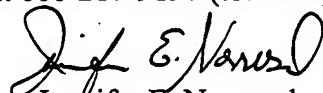
### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer E. Novosad whose telephone number is (703)-305-2872. The examiner can normally be reached on Monday-Thursday, 5:30am-4:00pm.

Please note, that due to the relocation of the U.S. Patent and Trademark Office from Arlington to Alexandria, Virginia, the Examiner's phone number will be changed. After April 5, 2005, please contact the Examiner at (571) 272-6832.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl D. Friedman can be reached on (703)-308-0839. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jennifer E. Novosad  
Primary Examiner  
Art Unit 3634

Jennifer E. Novosad/jen  
February 15, 2005